

Comparison of the Metropolitan Transportation Planning Draft and Final Rule

(This comparison only addresses Subpart C – Metropolitan Transportation Planning and Programming)
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Final Regulation Language	Change
450.306 Scope of the metropolitan transportation planning process (b) Consideration of the planning factors is paragraph (a) of this section shall be reflected, as appropriate in the metropolitan transportation process.	“should” was changed to “shall”.
450.306 Scope of the metropolitan transportation planning process (c) The failure to consider any factor specified in paragraph (a) of this section shall not be reviewable by any court under title 23 U.S.C., 49 U.S.C. Chapter 53, subchapter II of title 5, U.S.C. Chapter 7 in any matter affecting a metropolitan transportation plan, TIP, a project or strategy, or certification of a metropolitan transportation planning process.	The reference in bold was not included in the draft.
450.306 Scope of the metropolitan transportation planning process (e) In carrying out the metropolitan transportation process, MPOs, States, and public transportation operators may apply asset management principles and techniques in establishing goals, defining TIP priorities, and assessing transportation investment decisions, including transportation system safety	“are encouraged” was changed to “may”.
450.306 Scope of the metropolitan transportation planning process (f) The metropolitan transportation planning process shall (to the maximum extent practicable) be consistent with the development of applicable regional intelligent transportation systems (ITS) architectures, as defined in 23 CFR part 940.	“(to the maximum extent practicable)” was added to the final regulation.
450.306 Scope of the metropolitan transportation planning process (g) Preparation of the coordinated public transit-human services transportation plan, as required by 49 U.S.C. 5310, 5316, and 5317, should be coordinated and consistent with the metropolitan transportation planning process.	The draft language was worded as follows: “The metropolitan transportation planning process should be consistent with the development of Coordinated Public Transit-Human Services Transportation Plans, as required by 49 U.S.C. 5310, 5316 and 5317.”
450.306 Scope of the metropolitan transportation planning process (h) The metropolitan transportation planning process should be consistent with the Strategic Highway Safety Plan, as specified in 23 U.S.C. 148, and other transit safety and security planning and review processes, plans, and programs, as appropriate.	Reference to the “Regional Transit Security Strategies” was removed due to the confidential nature of those plans. The language (in bold) was added.

Final Regulation Language	Change
<u>450.310 Metropolitan planning organization designation and redesignation</u>	Language in paragraph (c) was changed to mirror the language in 23 U.S.C. 134(f)(2) and 49 U.S.C. 5303(f)(2).
<u>450.310 Metropolitan planning organization designation and redesignation</u>	Language in paragraph (d) has been changed to better reflect the language in statute and FHWA and FTA added language to the final rule to encourage MPOs to increase the representation of local elected officials and public transportation agencies on their policy boards.
<u>450.310 Metropolitan planning organization designation and redesignation</u> (f) Nothing in this subpart shall be deemed to prohibit an MPO from using the staff resources of other agencies, non-profit organizations, or contractors to carry out selected elements of the metropolitan transportation planning process.	“non-profit organizations, or contractors” was added to this paragraph
<u>450.310 Metropolitan planning organization designation and redesignation</u>	Most of the language in paragraph (k) in the draft rule has been moved to paragraph (j) in the final rule. “local elected officials currently serving on the MPO” has been deleted as well.
<u>450.310 Metropolitan planning organization designation and redesignation</u>	FHWA and FTA have modified language in paragraph (m) in the draft rule (now paragraph (l) in the final rule) to mirror the changes in Section 450.310 and changes in paragraph (k).
<u>450.312 Metropolitan planning area boundaries</u>	Paragraph (b) relating to MPOs in nonattainment areas revised the text to make it more consistent with statutory text and thus not limit flexibility beyond statutory requirements.
<u>450.312 Metropolitan planning area boundaries</u>	Paragraph (h) has been clarified to indicate that all boundary adjustments that change the composition of the MPO may require redesignation of one or more such MPOs, rather than only boundary changes that “significantly” change the composition of the MPO.
<u>450.314 metropolitan planning agreements</u>	FHWA and FTA encourage the use of a single agreement between the MPO, State and other agencies that participate in the metropolitan transportation planning process, however the final rule language has been changed to reflect the option for multiple agreements. Removing the implied requirement for a single written agreement should allow many current planning agreements to be sufficient.
<u>450.314 metropolitan planning agreements</u>	Paragraph (a)(2) from the draft rule discussing that the MOU should include provisions for consulting with local officials has been deleted since the issues are adequately addressed in Section 450.316.
<u>450.314 metropolitan planning agreements</u>	Paragraph (f) dealing with planning agreements between two or more MPOs serving part of a TMA has been revised to clarify that the entire adjacent urbanized area does not need to be treated as a TMA.

Final Regulation Language	Change
<u>450.316 interested parties, participation and consultation</u>	TEA-21 required a “public involvement plan” while SAFETEA-LU identifies a “participation plan”. FHWA and FTA describe the differences between those two plans as that the participation plan shall be developed in consultation with all interested parties; and include procedures for employing visualization techniques and making public information available in electronically accessible formats and means. FHWA and FTA allow MPOs to define “other interested parties” and allow MPOs to have the flexibility to develop and implement a participation plan that provides an appropriate list of interested parties for their individual region. MPOs are encouraged to broaden the list of interested parties beyond those listed in statute.
<u>450.316 interested parties, participation and consultation</u> (a)(1)(viii) Providing an additional opportunity for public comment, if the final metropolitan transportation plan or TIP differs significantly from the version that was made available for public comment by the MPO and raises new material issues which interested parties could not reasonably foreseen from the public involvement efforts;	The language in this paragraph has been revised to more closely follow the language in the October 1993 planning rule.
<u>450.316 interested parties, participation and consultation</u>	Language in paragraph (b) regarding consultation with resource agencies has been since it is addressed in Section 450.322. Instead, the phrase “(including State and local planned growth, economic development, environmental protection, airport operations, or freight movements) or coordinate its planning process (to the maximum extent practicable) with such planning activities” was added to the final rule. The phrase requiring MPOs to consult with “private agencies” was deleted from the final rule.
<u>450.316 interested parties, participation and consultation</u>	Paragraph (e) has been changed to require that MPOs, to the extent practicable, develop a documented process(es) that outline roles, responsibilities, and key decision points for consulting with other governments and agencies.
<u>450.318 transportation planning studies and project development</u> (a) Pursuant to section 1308 of the Transportation Equity Act for the 21 st Century, TEA-21 (Pub. L. 105-178) an MPO(s) =, State(s), or public transportation operator(s) may undertake a multimodal, system-level corridor or subarea planning study as part of the metropolitan transportation planning process. To the extent practicable, development of these transportation planning studies shall involve consultation with, or joint efforts among, the MPO(s), State(s), and/or public transportation operator(s).	The sentence in bold was added to the final rule for this paragraph.

Final Regulation Language	Change
<u>450.318 transportation planning studies and project development</u> (b)(2) The systems-level , corridor, or subarea planning study is conducted with:	Words in bold were added to the paragraph.
<u>450.320 Congestion management process in transportation management areas</u> (e) In TMAs designated as nonattainment for ozone or carbon monoxide, the congestion management process shall provide an appropriate analysis of reasonable (including multimodal) travel demand reduction and operational management strategies for corridor in which a project that will result in a significant increase in capacity for SOVs (as described in paragraph (d) of this section) is proposed to be advanced with Federal funds .	Words in bold were added to the paragraph.
<u>450.322 Development and content of the metropolitan transportation plan</u> (d) In metropolitan areas that are in nonattainment for ozone or carbon monoxide, the MPO shall coordinate the development of the metropolitan transportation plan with the process for developing transportation control measures (TCMs) in a State Implementation Plan (SIP).	The FHWA and FTA clarified the final rule concerning the role of the MPO in the development of SIP TCMs to be more consistent with the statute. The FHWA and FTA had proposed additional language in paragraph (d) that specified that the MPO, State air quality agency and the EPA must concur on the equivalency of any substitute TCM before an existing SIP TCM is replaced under section 176(c)(8)). After consultation with the EPA, this language was deemed unnecessary.
<u>450.322 Development and content of the metropolitan transportation plan</u> (e) The MPO, the State and the public transportation operator(s) shall validate data utilized in preparing other existing modal plans for providing input to the transportation plan, In updating the transportation plan, the MPO shall base the update on the latest available estimates and assumptions for population, land use, travel, employment, congestion, and economic activity. The MPO shall approve transportation plan contents and supporting analyses produced by a transportation plan update.	The FHWA and FTA believe that the requirement “validate data” provides more flexibility than “including a mechanism” that was in the draft rule.
<u>450.322 Development and content of the metropolitan transportation plan</u> (f)(5) Assessment of capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs. The metropolitan transportation plan mat consider projects and strategies that consider projects and strategies that address areas or corridors where current or projected congestion threatens the efficient functioning of key elements of the metropolitan area’s transportation system;	The wording in bold was added to encourage MPOs to address congestion in the metropolitan transportation plan.

Final Regulation Language	Change
<p><u>450.322 Development and content of the metropolitan transportation plan</u> (f)(7) A discussion of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the metropolitan transportation plan. The discussion may focus on policies, programs, or strategies, rather than at the project level. The discussion shall be developed in consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies. The MPO may establish reasonable timeframes for performing this consultation;</p>	<p>The FHWA and FTA changes the language to more closely mirror the intent of statute (23 U.S.C. 134(i)(2)(B)).</p>
<p><u>450.322 Development and content of the metropolitan transportation plan</u> (f)(10)</p>	<p>Appendix B – Fiscal Constraint of Transportation Plans and Programs was deleted from the final rule. Reference to Appendix B was removed from paragraph (f)(10).</p>
<p><u>450.322 Development and content of the metropolitan transportation plan</u> (f)(10)(vi) For nonattainment and maintenance areas, the financial plan shall address the specific financial strategies required to ensure the implementation of TCMs in the applicable SIP.</p>	<p>This paragraph was added to address nonattainment and maintenance areas.</p>
<p><u>450.322 Development and content of the metropolitan transportation plan</u> (f)(10)(vii) For illustrative purposes, the financial plan may (but is not required to) include additional projects that would be included in the adopted transportation plan if additional resources beyond those identified in the financial plan were to become available.</p>	<p>This paragraph was added to reinforce that the financial plan is not required to include illustrative projects and to clarify situations where a revenue source is removed or substantially reduced after the FHWA and the FTA find a metropolitan transportation plan to be fiscally constrained..</p>
<p><u>450.322 Development and content of the metropolitan transportation plan</u> (g) The MPO shall consult, as appropriate, with State and local agencies responsible for land use.....</p>	<p>“As appropriate” was added to provide additional flexibility in this emerging area and to respect the sensitive nature of homeland security issues.</p>
<p><u>450.322 Development and content of the metropolitan transportation plan</u> (k) A State or MPO shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (f)(10) of this section.</p>	<p>The reference in this paragraph was changed to reflect the language in paragraph (f)(10).</p>
<p><u>450.324 Development and content of the transportation improvement program (TIP)</u></p>	<p>FHWA and FTA changed paragraph (c) to allow the inclusion of the exempted projects, but not requiring that they be included. The phrase “federally supported” was removed from the beginning of the paragraph because it was redundant. “Safety projects funded under 23 U.S.C. 402” was added to paragraph (c)(1).</p>

Final Regulation Language	Change
<u>450.324 Development and content of the transportation improvement program (TIP)</u>	Paragraph (e)(3) was changed to specifically reference the amount of “Federal funds” proposed to be obligated and to identify separate standards for the first year and the subsequent years of the TIP.
<u>450.324 Development and content of the transportation improvement program (TIP)</u>	Following sentence was added to paragraph (h): Starting December 11, 2007, revenue and cost estimates for the TIP must use an inflation rate(s) to reflect “years of expenditure dollars,” based on reasonable financial principles and information developed cooperatively by the MPO, state(s), and public transportation operator(s).
<u>450.324 Development and content of the transportation improvement program (TIP)</u>	Paragraph (k) (now paragraph (m)) regarding eligible projects that may proceed without revisiting the requirements of this section. The phrase “or consistent with” to the paragraph was added to clarify that eligible projects (e.g., exempt projects under 40 CFR 93.126) do not need to be explicitly listed in the conforming transportation plan and TIP to proceed.
<u>450.324 Development and content of the transportation improvement program (TIP)</u> (o) In cases that the FHWA and the FTA find a TIP to be fiscally constrained and a revenue source is subsequently removed or substantially reduced (i.e. by legislative or administrative actions), the FHWA and the FTA will not withdraw the original determination of fiscal constraint. However, in such cases, the FHWA and FTA will not act on an updated or amended TIP that does not reflect the changed revenue situation.	This paragraph was added to clarify situations where a revenue source is removed or substantially reduced after the FHWA and the FTA find a STIP to be fiscally constrained.
<u>450.326 TIP revisions and relationship to the STIP</u> (a) An MPO may revise the TIP at any time under procedures agreed to by the cooperating parties consistent with the procedures established in this part for its development and approval. In nonattainment or maintenance areas for transportation-related pollutants, if a TIP amendment involves non-exempt projects (per 40 CFR part 93), or is replaced with an updated TIP, the MPO and the FHWA and the FTA must make a new conformity determination. In all areas, changes that affect fiscal constraint must take place by amendment of the TIP. Public participation procedures consistent with S.450.316(a) shall be utilized in revising the TIP, except that these procedures are not required for administrative modifications.	In order to clarify the paragraph, the phrase “projects of the type covered in section 450.324(f)” has been removed from paragraph (a). Paragraph (a) has also been revised to clarify that the transportation conformity rule (40 CFR 93.104(c)(2) requires a transportation conformity determination be made if a TIP amendment involves non-exempt projects. If a non-exempt project has already been incorporated into a regional emissions analysis and is merely moving from the currently conforming metropolitan transportation plan to the TIP, and is not crossing an analysis year, FHWA agrees that the conformity determination on the TIP can be based on a previous regional emissions analysis if the requirements of 40CFR 93.122(g) are met.

Final Regulation Language	Change
<p><u>450.328 TIP action by the FHWA and the FTA</u></p> <p>(a) The FHWA and the FTA shall jointly find that each metropolitan TIP is consistent with the metropolitan transportation plan produced by the continuing and comprehensive transportation process carried on cooperatively by the MPO(s), the State(s), and the public transportation operator(s) in accordance with 23 U.S.C. 134 and 49 U.S.C. 5303. This finding shall be based on the self-certification statement submitted by the State and MPO under S450.334, a review of the metropolitan transportation plan by the FHWA and the FTA, and upon other reviews as deemed necessary by the FHWA and the FTA.</p> <p>(c) If the metropolitan transportation plan has not been updated in accordance with the cycles defined in S 450.322(c), projects may only be advanced from a TIP that was approved and found to conform (in nonattainment and maintenance areas) prior to expiration of the metropolitan transportation plan and meets the TIP update requirements of S 450.324(a). Until the MPO approves (in attainment areas) or the FHWA/FTA issues a conformity determination on (in nonattainment and maintenance areas) the updated metropolitan transportation plan, the TIP may not be amended.</p> <p>(f) Where necessary in order to maintain or establish operation, the FHWA and the FTA may approve highway and transit operating assistance for specific projects or programs, even though the projects or programs may not be included in an approved TIP.</p>	<p>Paragraph (a) has been revised to remove the phrase “including amendments thereto”.</p> <p>Paragraph (c) has been revised to be consistent with the Clean Air Act requirements and clarifies that projects may only be advanced once the plan expires if the TIP was approved and found to conform prior to the expiration of the metropolitan transportation plan and if the TIP meets the TIP update requirements of S 450.324(a).</p> <p>Paragraph (f) has been revised to allow highway operating funds to be approved even if not in the TIP. This was erroneously eliminated previously.</p>
<p><u>450.332 Annual Listing of Obligated Projects</u></p> <p>(a) In metropolitan planning areas, on an annual basis, no later than 90 calendar days following the end of the program year, the State, public transportation operator(s), and the MPO shall cooperatively develop a listing of projects (including investments in pedestrian walkways and bicycle transportation facilities) for which funds under 23 U.S.C. Chapter 53 were obligated in the preceding program year.</p>	<p>Language specifying “State program year” or “federal fiscal year” in paragraph (a) has been changed so that the MPO, State, public transportation operator(s) determine the “program` year”. The definition of “program year” is not contained in these regulations.</p>

(This comparison only addresses Subpart A – Transportation Planning and programming Definitions)

Final Regulation Language	Change
<p><u>450.104. Definitions</u></p> <p>(a) <i>Administrative modification</i> means a minor revision to a long-range statewide or metropolitan transportation plan, Transportation Improvement Program (TIP), or Statewide Transportation Improvement Program (STIP) that includes minor changes to project/project phase costs, minor changes to funding sources or previously-included projects, and minor changes to project/project phase initiation dates. An administrative modification is a revision that does not require public review and comment, redemonstration of fiscal constraint, or a conformity determination (in nonattainment and maintenance areas).</p>	<p>The definition of administrative modification has been revised to include the words “minor revision, and remove the phrase “not significant”. Examples in the definition have also been clarified.</p>
<p>(a) <i>Amendment</i> means a revision to a long-range statewide or metropolitan transportation plan, TIP, or STIP that involves a major change...including the addition or deletion of a project or a major change in project cost...Changes to projects that are included only for illustrative purposes do not require an amendment... In the context of a long-range statewide transportation plan, an amendment is a revision approved by the State in accordance with its public involvement process.</p>	<p>The definition of “amendment” has been revised to include the word “major”. State DOTs and MPOs should work with the FHWA and the FTA to identify thresholds for a “major” change in project cost. A sentence has also been added to the definition to clarify changes in illustrative projects do not require an amendment. Clarification has also been added regarding amendments to a long-range statewide plan.</p>
<p>(a) <i>Attainment area</i> means any geographic area in which levels of a given criteria air pollutant ...meet the health-based National Ambient Air Quality Standards (NAAQS) for that pollutant...A “maintenance area” is not considered an attainment area for transportation planning purposes.</p>	<p>The definition of “attainment area” has been revised to be consistent with the definition in the glossary of the EPA’s Plain English Guide to the Clean Air Act. Definition also clarifies that “maintenance area” is not considered an attainment area for transportation planning purposes.</p>
<p>(a) <i>Available funds</i> means funds derived from an existing source dedicated to or historically used for transportation purposes. For Federal funds, authorized and/or appropriated funds and the extrapolation of formula and discretionary funds at historic rates of increase are considered “available.” A similar approach may be used for State and local funds that are dedicated to or historically used for transportation purposes.</p> <p>(a) <i>Committed funds</i> means funds that have been dedicated or obligated for transportation purposes...</p>	<p>The definition of “<i>available funds</i>” and “<i>committed funds</i>” has been simplified by removing the phrase “for projects or project phases in the first two years of a TIP and/or STIP in air quality nonattainment and maintenance areas”. Deleting the phrase has not removed the requirement that projects in the first two years of a STIP and/or TIP in air quality nonattainment and maintenance areas be available or committed. In addition, the definition of <i>committed funds</i> now contains the phrases “project construction grant agreement”, and “full funding grant agreement” in the project examples.</p>
<p>(a) <i>Conformity</i> means a Clean Air Act (42 U.S.C. 7506(c)) requirement that ensures that Federal funding and approval are given to transportation plans, programs, and projects...</p>	<p>The definition of “<i>conformity</i>” was revised based on language from the EPA’s conformity Web page and in the EPA’s conformity rule.</p>

Final Regulation Language	Change
(a) Consultation means ...This definition does not apply to the “consultation” performed by the States and the MPOs in comparing the long-range statewide transportation plan and the metropolitan transportation plan, respectively, to State and Tribal conservation plans or maps or inventories of natural or historic resources...	A sentence has been added to the definition to recognize that this definition is not the one used in Section 450.214 (Development and Content of the Long-Range Statewide Transportation Plan, and 450.322 (Development and Content of the Metropolitan Transportation Plan)..
(a) <i>Coordinated public transit-human services transportation plan</i> means...	The definition was changed to be consistent with that used in the proposed FTA Circulars for implementing the 49 U.S.C. 5310, 5316, and 5317 programs.
(a) <i>Design concept</i> means the type of facility identified for a transportation improvement project...	The word “exclusive” has been removed from the examples.
(a) <i>Financially constrained or Fiscal constraint</i> means that the metropolitan transportation plan, TIP, and STIP includes sufficient financial information for demonstrating that projects in the metropolitan transportation plan, TIP and STIP can be implemented using committed, available, or reasonably available revenue source with reasonable assurance that the federally supported transportation system is being adequately operated and maintained . For the TIP and the STIP, financial constraint/fiscal constraint applies to each program year.	The definition has been revised to clarified that fiscal constraint related to “by source” to be consistent with the October 1993 planning rule. FHWA and FTA consider demonstrating funding by year and by source necessary for decision-makers and the public to have confidence in the STIP and TIP as financially constrained. The change clarifies that fiscal constraint documentation should include committed, available, or reasonably available revenue sources. In addition, the definition now includes the phrase “ with reasonable assurance that the federally supported transportation system is being adequately operated and maintained ” instead of “ while the existing system is adequately maintained . The definition also specifies that the definition applies to the metropolitan transportation plan, TIP and STIP.
(a) <i>Financial plan</i> means...(and optional for the long-range statewide transportation plan and STIP)...	The definition has been clarified to include a statement that a financial plan is optional for the long-range statewide transportation plan and the STIP. In addition, financial plans are not required for illustrative projects as now stated in Section 450.216(m). The definition has also been revised to remove the phrase “as well as operating and maintaining the entire transportation system”.
(a) <i>Illustrative project</i> means an additional transportation project that may (but is not required to) be included in a financial plan for a metropolitan transportation plan, TIP, or STIP if reasonable additional resources were to become available.	The definition has been revised to clarify that “illustrative projects” refer to additional transportation projects that would be included in financially constrained transportation plans and programs if “additional resources were to become available”.
(a) <i>Obligated projects</i> means strategies and projects funded under title 23 U.S.C and title 49 U.S.C. Chapter 53 for which the ...in the preceding program year and authorized by the FHWA or awarded as a grant by the FTA.	The definition was changed to emphasize that funds need to be authorized by the FHWA or awarded as a grant by the FTA.

Final Regulation Language	Change
(a) <i>Operational and management strategies</i> means actions and strategies aimed at improving the performance of existing and planned transportation facilities...	The definition has been changed by removing the word “vehicular” as a modifier for operational and management strategies in order to emphasize that these strategies should be considered for all modes.
(a) <i>Project selection</i> means the procedures followed by MPOs, States, and public transportation operators to advance projects from the first four years of an approved TIP and/or STIP to implementation, in accordance with agreed upon procedures.	The definition now emphasizes the use of procedures for project selection used by MPOs, States, and public transportation operators.
(a) <i>Regionally significant project</i> means a transportation project (other than projects that may be grouped in the TIP and/or STIP or exempt projects as defined in EPA’s transportation conformity regulation (40 CFR part 93) that is on a facility which serves...	The definition has been changed to be consistent with EPA’s transportation conformity rule. The reference to all capacity expanding projects has been removed.
(a) <i>State Implementation Plan</i> means ...	The definition has been revised to cite applicable sections of the Clean Air Act.
(a) <i>Statewide transportation improvement program (STIP)</i> means ...	The definition has been clarified to describe the STIP as a “prioritized listing/program” and to reiterate that it must cover a period of four years. Similar changes were also made to the definition of Transportation Improvement Program (TIP).
(a) Update means making current a long-range statewide transportation plan, metropolitan transportation plan, TIP or STIP through a comprehensive review...Updates require a 20-year horizon year for metropolitan transportation plans and long-range statewide transportation plans, a four-year program period for TIPs and STIPs...	The revised definition removes the phrases “in order to meet the regular schedule as prescribed by Federal statute” and “complete change”. The definition now states the horizon time period required for updates.
(a) <i>Visualization techniques</i> means methods used by States and MPOs in the development of transportation plans...	The word “employed” has been deleted and replaced with “used”. FHWA intends to provide technical reports and guidance subsequent to the publication of this rule.